



STATE BOARD OF EQUALIZATION

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March 11, 1994

BURTON W. OLIVER
Executive Director

Mr. S--- H. L---
K--- & M---
XXXX --- --- East, Suite XXXX
--- ---, CA XXXXX

Re: K--- C---, Ltd.

Dear Mr. L---:

This is in response to your letter of September 29, 1993. You had inquired as to California sales and use tax consequences of certain licensing agreements entered into between your client, K--- C---, Ltd. ("K---"), and various museums located in California. K--- temporarily provides unique display pieces to museums for exhibition to the public.

We had advised you by telephone that we would be unable to respond to your letter until the State Board of Equalization acted upon the petition for redetermination of sales tax filed by D---, Inc. D---, Inc., has been engaged in activities substantially similar to those conducted by your client. That matter had originally been scheduled for action on November 8, 1993. It was postponed several times and finally acted upon in public session on March 9, 1994. The Board's action in the D--- matter is now a matter of public record and can be discussed, notwithstanding the basic confidentiality provisions of the Sales and Use Tax Law.

D--- was engaged in the same business as your client, providing museum display pieces for exhibition to the public. As with your client, D--- received compensation based upon a portion of the receipts derived by the museum from special exhibition fees. The D--- agreement was expressly characterized as a lease agreement. However, notwithstanding the expressed characterization of the relationship between the parties, the Board recharacterized the relationship and concluded that the transactions were not lease transactions. The Board concluded that the transactions were not lease transactions, despite the fact that the display pieces were exhibited on the premises of the museum, because the Board found that the museum did not acquire sufficient dominion or control over the properties such that the museum could be regarded as having acquired possession of the properties.

The licensing agreements used by your client are not expressly identified as lease agreements. The critical terms concerning the rights, duties, and responsibilities of the museum are substantially the same as those found in the D--- agreements, however. The museum agrees (a) to operate the Exhibit on the Museum premises only; (b) not to move the Exhibit without the prior written authorization of K---; (c) to operate the Exhibit during the Museum's normal exhibit hours only; (d) to display the Exhibit in a temperature-controlled enclosed building to provide maximum protection for all of the components of the Exhibit; (e) not to allow photographs, videos or other duplications to be taken or made of the Exhibit by any person for commercial purposes; unless prior authorization has been obtained, and (f) not to duplicate, or attempt to duplicate, in any way the components contained in the Exhibit.

It is the responsibility of the museum to provide routine maintenance for the proper functioning of the Exhibit, including, without limitation, turning machines on and off, and performing similar functions, all in accordance with written instructions contained in a manual to be provided to the Museum by K---, or other written or oral guidelines provided by K---.

Based upon the decision of the Board in the D--- matter, it is our opinion that there is no lease of the exhibits from K--- to the museums. K--- is the consumer for sales and use tax purposes of the museum pieces in question.

By copy of this letter to our Van Nuys Office, we are advising that office that your client is not required to hold a seller's permit by virtue of its --- exhibit licensing activities.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr

cc: Mr. N. Campos - Van Nuys District (AC)